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December 5, 2011

**BY HAND DELIVERY**

Jeff S. Jordan, Esquire  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: **MUR 6500**  
**Clark Durant and The American Way – Durant 2012, Respondents**

Dear Mr. Jordan:

This response is submitted on behalf of Respondents, Clark Durant and The American Way – Durant 2012, in regard to the Second Amended Complaint filed by Mr. Bill Beddoes on October 6, 2011.

The complaint makes various allegations against Mr. Durant and his U.S. Senate campaign committee, The American Way – Durant 2012. For the reasons discussed below, the complaint should be dismissed as to these Respondents. The complaint also makes allegations against the New Common Schools Foundation ("Foundation") and Cornerstone Schools Association ("Cornerstone"), which will be addressed separately by their counsel.

**Retention of Lawyers for Compliance Advice**

Based on an article in *Crain's Detroit Business*, the complaint asserts that the New Common Schools Foundation asked its attorneys to review the legal issues related to Mr. Durant's campaign for U.S. Senate and his duties as President of the Foundation. The complaint alleges that these legal services amount to an in-kind corporate contribution to the Durant campaign in violation of 2 U.S.C. § 441b(a), and that Mr. Durant violated 11 CFR § 300.61 by directing the expenditure of corporate funds to pay for legal fees to the benefit of his campaign.

This allegation, on its face, fails to articulate any violation of the Federal Election Campaign Act of 1971 ("FECA"), as amended, or Federal Election Commission regulations by Mr. Durant or his campaign. The *Crain's Detroit Business* article merely reported that the Foundation retained counsel to advise it on whether its activities and the activities of its

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President, as a candidate for federal office, might raise compliance issues for the organization under federal campaign finance laws. There are simply no facts in the *Crain's* article to establish or even suggest that this prudent step to ensure corporate compliance with the campaign finance laws resulted in an impermissible corporate contribution to the campaign.

Quite apart from Complainant's interpretation of the *Crain's* article, the actual facts establish the allegation's complete lack of merit. Out of an abundance of caution, Mr. Durant and the Foundation retained separate counsel to advise them on their legal obligations arising out of Mr. Durant's candidacy. Mr. Durant personally retained and paid for the legal services of Webster, Chamberlain & Bean, LLP with regard to his relationship with the Foundation during his candidacy. The Foundation, on the other hand, retained and paid for legal compliance services provided by the firm of Lipson, Neilman, Coin, Seltzer & Garin, P.C.

Accordingly, this allegation is simply without merit and should be dismissed.

#### Use of Copyrighted Material

The complaint also alleges that Cornerstone made and the campaign accepted illegal corporate contributions when the campaign used purportedly copyrighted images and video that Cornerstone posted on YouTube. This allegation would appear to be directed at the campaign, and not Mr. Durant, individually.

We understand that Cornerstone has never sought federal recognition of any copyright with respect to its videos, nor do the videos state or otherwise reflect that they are subject to copyright. Moreover, Cornerstone's videos are posted on YouTube where they are publicly available.<sup>1</sup> In fact, YouTube provides tools that allow users to share videos. Accordingly, this allegation does not constitute a violation of the FECA or Commission regulations and should be dismissed.

#### Events Related to Appearance at Cornerstone School

Finally, the complaint alleges that certain activities related to Mr. Durant's appearance at Cornerstone on September 23, 2011, resulted in the campaign receiving an impermissible corporate contribution from the school, as well as an improper endorsement by Cornerstone of the candidate. These activities consist entirely of the use of school facilities for Mr. Durant's appearance and Ms. Sanders' email to the school's "Partners" and "Friends" inviting them to the appearance. This allegation would appear to be directed at the campaign, and not Mr. Durant, individually.

<sup>1</sup> The Commission has recognized that publicly available information does not raise contribution concerns. Indeed, a safe harbor was created in the Commission's coordinated communication regulations specifically for information obtained from a publicly available source. 11 CFR §109.21(d). See also *FEC v. Public Citizen*, 64 F. Supp. 2d 1327 (N.D. Ga. 1999) (organization's communications supporting a candidate did not qualify as coordinated expenditure because the organization used information disseminated to the public by the campaign).

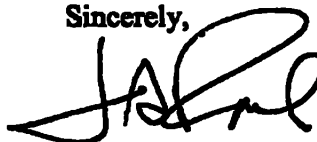
Under FEC regulations, a candidate may appear at an educational institution provided the campaign pays the usual and normal charge for the use of the school's facilities. 11 CFR § 114.4(c)(7). The campaign consulted with Cornerstone, and after a review of similar venues in the area determined that the usual and normal charge for an equivalent facility is \$800. The Durant campaign has provided payment to Cornerstone in this amount. The school did not provide the campaign with any other goods or services at the event which would require reimbursement by the campaign. Moreover, to assist with ongoing compliance with FECA and Commission regulations, The American Way – Durant 2012 has also retained counsel to advise it on compliance with applicable laws and regulations.

Ms. Sanders' email was prepared without the assistance of the Durant campaign. Neither Mr. Durant nor his campaign staff members provided any input to or suggestions for the email invitation. In addition, the email did not endorse Mr. Durant's candidacy or request that others do so.

In light of the foregoing, we respectfully request that all of the allegations in the complaint be dismissed as to Respondents Clark Durant and The American Way – Durant 2012. To the extent any minor violation may have occurred inadvertently by virtue of the actions of any of the respondents, it would be of a very low dollar amount, and we would request that the Commission exercise its prosecutorial discretion and dismiss all of the allegations. See e.g., MUR 6176 (Committee to Elect Bayburn); MUR 6333 (Lowrey for Congress); MUR 6369 (Randy Hultgren for Congress); MUR 6350 (Mark Ried for Congress).

Thank you for your consideration of this response. Please feel free to contact me if you require additional information.

Sincerely,



James A. Kahl

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